

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



Regulation Package # 1105-17

September 23, 2006

CDSS MANUAL LETTER NO. CCL-06-03

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,
DIVISION 6, CHAPTER 8.5, RESIDENTIAL CARE FACILITIES FOR THE
CHRONICALLY ILL

Regulation Package #1105-17**Effective 8/10/06****Sections 87819, 87819.1 and 87854**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/Residentia_634.htm.

These regulations add or make changes to the Criminal Record Clearance sections in six regulation categories; add or make changes to the Criminal Record Exemption sections in five regulation categories; and add or make changes to the Penalties sections in five regulation categories. All revised or added regulations are mandated by Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, which were amended by Senate Bill (SB) 1240, Chapter 653, Statutes of 2004, Assembly Bill (AB) 358, Chapter 628, Statutes of 2004 and the Gresher v. Anderson decision (Alameda County Superior Ct. No. 8074577). SB 1240 increases an existing one-time civil penalty for allowing an individual to work or reside in a licensed facility without a criminal record clearance or exemption to an ongoing, per day civil penalty. SB 1240 also allows for the transfer of criminal history information between county and state licensing agencies. AB 358 expands the list of persons who are exempt from submitting fingerprints for a criminal background check. The Gresher v. Anderson Decision: permits certified family home employees to seek a criminal record exemption on their own behalf; permits terminated employees to seek a criminal record exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; requires that the licensing agency list the convictions that require a criminal record exemption; and requires that the licensing agency list the specific reason(s) the exemption was denied.

Section 87819 specifies who must submit fingerprints for a criminal record review and who is exempt; that persons subject to a criminal record review be cleared or have a criminal record exemption prior to working or residing in a licensed facility; and the resulting civil penalty for violation of background check requirements. Section 87854 allows for the assessment of civil penalties for violation of licensing regulations.

Sections 87819 and 87854 were amended to increase an existing one-time, \$100 background check violation civil penalty to a \$100 per day, for a maximum of five days civil penalty for initial violations and \$100 per day, for a maximum of 30 days, civil penalty for subsequent violations.

Section 87819.1 specifies the entire criminal record exemption process. Regulations were amended to: allow certified family home employees to seek an exemption on their own behalf; permit terminated employees to seek an exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; require that the exemption needed notice, sent to the affected individual by the licensing agency, list the convictions that require an exemption; and require that exemption denial notices specify the reason the exemption was denied.

These regulations were adopted on August 10, 2006 and were considered at the Department's public hearing held on March 15, 2006.

FILING INSTRUCTIONS

The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-06-02. The latest prior manual letter containing Residential Care Facilities for the Chronically Ill regulation changes was Manual Letter No. CCL-05-11.

<u>Page(s)</u>	<u>Replace(s)</u>
26 through 29	Pages 26 through 29
35.1	Page 35.1
64 through 66.1	Page 64 through 66.1

Attachments

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87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with permission of, the client.
 - (A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients if all of the following apply:
 - (A) Members are not left alone with the clients.
 - (B) Members do not transport clients off the facility premises.
 - (C) The same group does not conduct such activities more often than once a month.
- (6) A volunteer if all of the following apply:
 - (A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer is never left alone with clients.
 - (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

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- (7) The following individuals unless contraindicated by the client's needs and service plan:
 - (A) A spouse, relative, significant other, or close friend of a client.
 - (B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.
- (8) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.
- (d) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1568.09 shall prior to working, residing or volunteering in a licensed facility:
 - (1) Obtain a California clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (e) Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five (5) days by the Department.
 - (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.0822.
- (f) Violation of Section 87819(d) may result in a denial of the license application or suspension and/or revocation of the license.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1568.09 discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation, for which the fine was less than \$300, and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the following actions:
- (1) For initial applicant, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, including spouses of the applicant, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1568.092 and denial of the application or revocation of the license if the individual continues to provide services and/or reside in the facility.
- | (h) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87866.
- | (i) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
- (1) Documentation shall be available at the facility for inspection by the Department.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- | (j) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
 - (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

| NOTE: Authority cited: Section 1568.072 and 1568.0822(e), Health and Safety Code. Reference: Sections 1568.072, 1568.09 and 1568.22, Health and Safety Code.

87819.1 CRIMINAL RECORD EXEMPTION**87819.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87819.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1568.09(c)(4);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (b) In addition to the requirements of Section 87819.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
- (1) The applicant/licensee requests an exemption for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 87819.1(c)(4). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.
- (2) The notice will list the information that must be submitted to request a criminal record exemption.
- (3) The information must be submitted within forty-five (45) days of the date of the Department's notice.
- (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87819.1(e).

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- | (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
- | (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.
- | (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
 - | 1. Chooses not to request the exemption and
 - | 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or
 - | 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.
- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
 - (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.
 - (6) Character references.
- (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).

87819.1 (Cont.)	RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL	Regulations
87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
	<ul style="list-style-type: none"> (7) A certificate of rehabilitation from a superior court. (8) Evidence of honesty and truthfulness as revealed in exemption application documents. <ul style="list-style-type: none"> (A) Documents include, but are not limited to: <ul style="list-style-type: none"> 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest. (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department. (f) The Department shall also consider the following factors in evaluating a request for an exemption: <ul style="list-style-type: none"> (1) Facility and type of association. (2) The individual's age at the time the crime was committed. (g) The Department may deny the individual's exemption request if: <ul style="list-style-type: none"> (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process. (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department. <ul style="list-style-type: none"> (1) Exemption denial notices shall specify the reason the exemption was denied. (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility. (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual: <ul style="list-style-type: none"> (1) Makes a knowingly false or misleading statement regarding: <ul style="list-style-type: none"> (A) Material relevant to their application for a criminal record clearance or exemption, (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or 	

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
 - (2) The exemption does not meet current exemption laws or regulations or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate an administrative action.
- (x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, 1568.082, 1568.09, and 1568.092, Health and Safety Code, and Gresher v. Anderson (2005) 127 Cal. App. 4th 88.

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87853	FOLLOW-UP VISITS TO DETERMINE COMPLIANCE	87853
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- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
 - (1) The follow-up visit shall be conducted within ten working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.
 - (2) Except as specified in Section 87854, no penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty (Facility Civil Penalty Assessment - LIC 421 (10/89)).
- (c) A notice of penalty shall be in writing and shall include:
 - (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.
- (d) When an immediate penalty has been assessed and the correction is made while the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.07 and .072, Health and Safety Code.

87854	PENALTIES	87854
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- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) An immediate penalty of \$100 per cited violation per day for a maximum of five (5) days shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1568.09(b) has not obtained a California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87819(d) prior to working, residing or volunteering in the facility.
 - (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.0822.
 - (3) Progressive civil penalties specified in Sections 87854(c) and (d) below shall not apply.
- (c) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (d) When a facility, that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87854(c) above, violates the same regulation subsection within a 12-month period of the last violation, the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.
 - (1) For purposes of Sections 87854(c) and (d) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

HANDBOOK BEGINS HERE

An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5).
Sections 87218(a) and 87218(b) are not the same regulation subsection.

HANDBOOK ENDS HERE

87854	PENALTIES (Continued)	87854
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- (e) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
 - (1) Immediate penalty assessments specified in Sections 87854(b), (c) and (d) above shall begin on the day the deficiency is cited.
 - (2) If an immediate penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (f) If a licensee or his/her representative reports to the Department that a deficiency has been corrected, the penalty shall cease as of the day the Department receives notification that the correction was made.
 - (1) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
 - (2) If it is verified that the deficiency has not been corrected, penalties shall continue to accrue.
 - (3) If it is verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (g) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.
- (h) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (g) above.

| NOTE: Authority cited: Sections 1568.072 and 1568.0822(e), Health and Safety Code. Reference: Sections 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

87855	ADMINISTRATIVE REVIEW	87855
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- (a) A licensee or his/her representative shall have the right to request a review of a notice of deficiency and/or notice of penalty, within 10 working days of receipt of such notice(s).
 - (1) If the deficiency has not been corrected, penalties shall continue to accrue during the review process.
- (b) The review shall be conducted by a higher level staff person than the evaluator who issued the notice(s).

87855	ADMINISTRATIVE REVIEW (Continued)	87855
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- (c) If the reviewer determines that a notice of deficiency or notice of penalty was not issued or assessed in accordance with applicable statutes and regulations of the Department, or that other circumstances existed, he/she shall have the authority to amend or dismiss the notice.
- (d) The reviewer shall have the authority to extend the date specified for correction of a deficiency, if warranted by the facts or circumstances presented to support a request for extension.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.07 and .072, Health and Safety Code.

87855.1	DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES	87855.1
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- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code Section 1568.065.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.065, 1568.072, 1568.0822, and 1568.09, Health and Safety Code.